

# E-Filing Standards

by Roger Winters

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# E-Filing Standards

**What are they? How far along? Why does it matter?**

presented by

**Roger Winters**

Electronic Court Records (ECR) Program Manager  
King County Department of Judicial Administration  
Seattle, Washington

*This is a time of great technological change for the courts.*

*What is it about? How will it affect you?*

## I. “Electronic Filing” ↔ “Electronic Court Records”

I’ve been asked to tell you about **E-Filing Standards**. Last year, when keynoting the **National Center for State Courts’ E-Filing, Privacy and Access Conference**<sup>1</sup> in Las Vegas, John Greacen of Greacen Associates ([www.greacen.net](http://www.greacen.net)) said he had come to believe that the term we have all been using—**Electronic Filing**—does not fully describe what we are doing. He said we should call it **Electronic Court Records**, of which electronic filing is but a part. I have always believed the court record should be the central focus when developing electronic filing; I was glad to hear him acknowledge that as the better label for the technology revolution in the courts that is under way. The promise and potential from **Electronic Court Records** are what inspire us, spark our imaginations, raise our concerns, and call us to action.

Getting filings to our courts electronically is an activity we all have to do—it calls for a **standard** solution. *One size must fit all!*

As someone who has managed case records for a major county court (**King County Superior Court**, in **Seattle, Washington**), I have

come to believe the business of the court, the process of litigation, and much of the justice system revolve—almost literally—around the court’s case records. Litigants, judicial officers, the clerk, and others prepare and submit documents that make up the official record. These documents are placed in the custody of the clerk of court. While the clerk cannot guarantee those documents contain the truth, the clerk can certify that they remain the same as when they became part of the case record.

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<sup>1</sup> Throughout this paper, I have observed the following conventions: 1) Titles of documents, events, and specifications are shown in **boldface** and *italics*. 2) Names of organizations and groups are **boldfaced**. 3) Names of individuals are underscoring. 4) Quoted and excerpted material is shown in Arial, while text written by me is in Times New Roman. 5) Links (URLs) are underscoring and shown in Courier New. 6) Emphasis within a sentence is *italics*, underscoring, **boldfacing**, or a combination thereof—not fitting one of the other conventions. Mistakes may appear in any form.

**National Center for State Courts—E-Court 2002 Conference**  
—December 9, 2002—Las Vegas, Nevada—

Court case records serve as proof and evidence—they are the physical residuum of judicial processes. They tell the story of each case—the issues, the parties, and what led to the court’s decision or other outcome. The case file includes records that express and convey authority to enforce judicial orders, decrees, and rulings, which are objects of trust that can...

- prove a marriage has been dissolved.
- authorize incarceration, release...even lethal injection.
- command and instruct law enforcement agents on action they must take.
- protect one person by proscribing another person’s behavior.
- dictate, for children and adults, who may be with whom, how, and when.
- direct the division of goods and property, saying who gets what, where, when, and how.

This central role for the court record means what we do with it has repercussions throughout the justice system and thus throughout society. That is why standards that relate to court records are so important.

I might suggest a hybrid term—***Electronic Court Filing and Case Record Systems***—to label what the standards being written address. Our systems must manage our entire case record, not just receive documents electronically for filing. Our systems have to work with other systems such as case management, document management, calendaring, financial, and more, to take full advantage of technology, now and in the future.

Nevertheless, there are very good reasons to stick with the label ***Electronic Court Filing***. Even though it is not, strictly speaking, the best term for the big picture, it is the one everyone has been using. A better reason is that, when it comes to technical standards, courts, clerks, administrators, vendors, law firms, and other electronic filers must use the same basic technology for the electronic filing piece. Getting filings to our courts electronically is an activity we all have to do—it calls for a **standard** solution. *One size must fit all.* Once filings are inside the courthouse, each court deals with them *idiosyncratically*. Each “does its own thing” to manage its own documents, case files, and cases. A court’s “own thing” grows out of its traditions and habits and it is shaped and constrained by its technological capacity, infrastructure, and the systems it has (or will have) with which to work. This is why ***Electronic Court Filing*** is precisely where we need technical standards to guide everyone—we all need to accomplish this one thing in the same way. Without electronic filing standards, filers and service providers sending filings to more than one court will face a hodge-podge of diverse systems, requirements, and procedures—for them, electronic filing technology would be a nightmare, not a dream.

## **II. Getting Involved with the Standards**

Over the past three years, I have had the privilege of being involved with a historically significant endeavor for the courts, observing and helping with the development of standards for electronic court filing. The **King County Department of Judicial Administration (DJA)**, my employer, has supported the standards work by dedicating part of my time to it and by providing support for some travel to enable more effective participation. The Superior Court's Chief Administrative Officer, Paul Sherfey, and the Superior Court Clerk, Barbara Miner, believe that helping shape standards serves the best interests of our county, court, and clerk's office. While we could have taken a hands-off or wait-and-see approach, the resulting standards might not have addressed or supported what concerns us, nor provided the options we desire.

Beginning in 2000, **King County's Department of Judicial Administration** deployed a large and sophisticated electronic document management system.<sup>2</sup> We are now developing a new component, electronic filing, and we will continue with future stages to fulfill our vision for electronic court records. Catherine Krause, the Electronic Filing Project Manager, has also participated in the standards work occurring in the **Legal XML Member Section of OASIS (Organization for the Advancement of Structured Information Standards)**. In fact, our electronic filing project is being implemented in compliance with the *Electronic Court Filing 1.1* specification developed by that group, a specification that defines how electronic envelopes are to be set up to carry electronic filings to a court. We see the fullest employment of electronic records and information technology as a continuing source of substantial benefits for everyone involved with the court's business.

In the State of Washington, a great many court leaders, clerks, and administrators have shared a compelling vision for three quarters of a decade. Since 1994, we have known that electronic court records, electronic filing, and electronic document management are the basis for important improvements, many of which have already been realized. These improvements include:

- **greater help for judicial officers**, to ensure they have information they need to make decisions, by making case records available for use more quickly and reliably than is ever possible with paper;
- **improved support for court staff** and others who work with case files by providing desktop access to imaged documents and, in time, to fully electronic documents that can be used in many new ways;

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<sup>2</sup> The *Electronic Court Records System (ECR)* in the **King County Department of Judicial Administration** contains imaged records from court cases initiated since 2000 began, along with all case files archived since 1997. Today, *ECR* has about **4.15** million documents with approximately **32.9** million pages (approximately 8,000 new documents are filed daily). These records can be accessed through a Web-based ECR viewer. With important exceptions, after scanning, verifying, and indexing filings, the hard copy is not retained. For a detailed description of the *ECR* system and its development, see *Finding the Way to Electronic Court Records*, *edoc magazine* (July-August 2000) at [www.edocmagazine.com/earchives\\_articles.asp?ID=20551](http://www.edocmagazine.com/earchives_articles.asp?ID=20551).

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- **enhanced customer services**, eliminating the delay caused by the one-person-at-a-time nature of paper files, eliminating loss and misfiling, and making it possible for multiple users to work at the same time on the same record while at different physical locations;
- **improved processing in the Clerk’s Office**, where staff now can index, review, docket, act on, store, and retrieve case records thanks to image access, electronic workflow, new desktop tools, integration with systems of the **Washington State Administrative Office of the Courts (AOC)**, and other work process improvements;
- **ongoing savings from having eliminated paper** processes that take so much time and human resources, such as sorting papers, distributing them to hard copy case files on open shelving, hunting for lost and misfiled records, retrieving and returning file folders to shelves, managing access by customers who must share the one-and-only original record, policing handling of those official originals, and protecting against physical tampering, theft, and potential damage to which paper records are susceptible;
- **relief from problems due to severely limited space** for keeping physical files and documents and from the ongoing expense and inconvenience when closed case records (which are to be maintained “indefinitely”) have to be converted to and referenced from microfilm without computerization;
- **enhanced security for case records** through better tools to protect sealed and confidential records, control user access privileges, safeguard against system intrusions, and prevent alteration of records, plus decidedly improved backup and disaster preparedness;<sup>3</sup>
- **future Internet access to case records** so those who need to obtain information and conduct business with the court will not have to travel to the Courthouse—this service, not yet deployed, will comply with Washington State court rules now being developed on electronic records access, security, identity protection, and privacy; and
- **other enhancements** in court records and information management, including receiving, processing, accessing, and reusing data in documents thanks to ***Extensible Markup Language (XML)*** based information technology and standards enabling new systems and services that can be used to support the justice process.

King County’s reasons for participating in the standards-building process came in part from understanding how litigants, particularly attorneys, have cases and files in more than one court.

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<sup>3</sup> When the “Nisqually Quake,” a 6.8 Richter earthquake struck Seattle on February 28, 2001, the downtown Courthouse was closed for several days. It had been built in 1916 and was known to need extensive retrofitting to protect it from collapse in a major earthquake. The judges would not allow the court to return to the building until they were assured it would be safe, for them, staff, litigants, and especially jurors and witnesses. During the next several days, some court proceedings that had been scheduled for the Seattle Courthouse had to be held at the **Regional Justice Center** in Kent, Washington, 20 miles to the south, built in 1997. The hard copy files that were in the Courthouse in Seattle were not accessible due to the closure. However, the imaged files were accessible through **ECR**, which did not even hiccup, during or after the quake. This was an instance where the hard copy system was “down” but the computer system was working!

We knew they would have no interest in learning our electronic filing system, nor systems belonging to other courts in which they practice, if they were all different. Why would litigants care about internal savings and processing efficiencies obtained thanks to these electronic systems, if they had to learn separately how to use each and every one of them? Of what use would our electronic filing service be to filers if ours were set up differently from everyone else's? There are 17,000 courts in America—how many different systems might they develop if left to their own devices? Electronic filing technology has to be very much the same for everyone, building on standards developed by those with practical experience and those with technical expertise. It would be folly for any single court or vendor, or even a court system, to try to master on its own what it will take to build a complete electronic court records and filing system.

A consultant advised King County early in the planning process not to risk becoming an “island of technology” with a peculiar, idiosyncratic system and software not used by anyone else. Once we found that others were ready to work together on standards, we felt we could avoid the nightmare of every court having its own complex technical rules, systems, and processes. We became part of **Legal XML**, joining the effort in November of 1999. We have stuck with that effort as it morphed into a part of the **Organization for the Advancement of Structured Information Systems (OASIS)**, the **Legal XML Member Section**, and reorganized into several technical committees, including the **Electronic Court Filing Technical Committee**, which has done the most work to build electronic filing standards.<sup>4</sup>

Washington State court leaders have been closely involved in the groups building the functional and policy standards, including the **Consortium for State**

***There are 17,000 courts in America—how many different systems might they develop if left to their own devices?***

**Court Automation** which Mary McQueen, Washington's Administrative Officer of the Courts, chairs. Her technology staff participates in the **Global Infrastructure Standards Work Group**, the **Joint Standards Development team**, the **Court Filing Technical Committee**, **Integrated Justice Technical Committee**, and other groups involved with standards (as discussed below).

While we (or you) might well have gone our own way, disregarding other courts and forgetting we have common needs, we would have hurt ourselves as much as anyone. We would have carried the burden of doing everything from scratch. We would have learned hard lessons from lonely experience. We would have had to invent the car from the wheels up, step by step, part by part, even when others might already have built a perfectly good one. We would squander scarce resources on limited, local systems without developing links with the expertise and experience of others. We would be unable to count on the willing participation of legal practitioners in systems, for their choice between sticking with paper and mastering specialized, complicated,

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<sup>4</sup> I have been allowed to volunteer to serve as **Editor** for **Electronic Court Filing**, **Integrated Justice**, **eContracts**, **Transcripts**, and other Legal XML technical committees, but we are limiting editor duties to assisting with templates for specifications, technical assistance with writing prior to publication on the Web site, and so forth. The technical committees have adopted or are looking at procedures for work product development, version numbering, and file naming which I have proposed.

localized technology would surely be made in favor of paper. Our hoped-for savings through new technology would be limited at best.

Alone, we might not have built our systems with larger purposes in mind beyond electronic delivery. We would not be aware of others ready to join a cooperative effort to build standards. We would not know about nor be eager to use the *Justice XML Data Dictionary* now in development. Our court information systems would not be able to interact with and share data, information, and applications with other law, safety, and justice organizations in our county or elsewhere. The idea of Integrated Justice would seem an idle dream or something that could be achieved only through building some master computer system that all of us would have to switch over to and use. We would not have seen there are ways, through XML technology, to share data and information among organizations despite having disparate, seemingly “incompatible” databases, computer systems, and applications.

Standards, if not *proprietary standards* owned by a company or other entity, are open, public, and shared. Those writing them must be willing to share their ideas, their intellectual property. It is hard for us sometimes to work on public standards because we are human enough to want to advantage our “excellent” product, protect a market share, or be praised for our contributions and genius. Standards do not feed the human ego what it craves. To participate in cooperative standards development, specifically, under the *OASIS/Legal XML* rules, one must relinquish one’s rights to any intellectual property one has contributed. Standards must be available for everyone at no cost. Each implementer may be able to improve on or add valuable functions to the fundamentals, but the standards provide the common denominator.

Standards should be minimal, as simple as possible, “plain vanilla” enough so anyone could use them for a bare bones, yet complete and workable application. The ability to add “bells and whistles” and value-added services gives vendors and developers many incentives. The opportunity to market their products as being compliant with standards should give them a higher value than when their product is solely their own design. The intellectual property rules of *Legal XML* and *OASIS* ensure that the work products from their technical committees will be available to serve everyone.

*What good would a standard be, if it does not raise all boats?*

### **III. Types of Standards for Electronic Filing**

There are three basic types of “standards” that relate to electronic filing:

- **Functional**
- **Technical**
- **Policy**

### 1. Functional Standards

Below, I have reprinted parts of the *Standards for Electronic Filing Processes*, also referred to as the “**Functional Standards**.” This document is already well along in the process of review and approval for use in courts in the United States. The excerpts I have chosen are elements I believe to raise particularly important concepts, issues, policies, and practices relative to building electronic court filing systems.

Since its publication, I have recommended the *Standards*... often as a well-written introduction to the subject. This and many related documents are available in various formats at the **National Center for State Courts**’ technical standards Web site. See them at [ncsconline.org/D\\_Tech/Standards/Standards.htm](http://ncsconline.org/D_Tech/Standards/Standards.htm).

### 2. Technical Standards

The technical standards for XML technology for electronic filing and related functions in the courts are being addressed or are reflected in four significant activities. While most of what has been published as technical standards has so far come from the **OASIS Legal XML Electronic Court Filing Technical Committee**, the other efforts will make important contributions to standards development and use. I hope all the efforts result in open, shared nationwide standards for XML technology in court electronic filing systems.

### 3. Policy Guidance

There are key policy issues that are not, strictly speaking, electronic filing standards, but that are under discussion nationwide. A number of **Policy Issues** are reviewed and recommendations discussed in *Standards for Electronic Filing Processes*, the functional standards document. Of special interest today are the serious issues around privacy and public access, particularly Internet access, to court records. That subject will be covered in a later session at our conference. The outstanding study and report published through the **National Center for State Courts** that addresses public access, privacy, and many related issues is at [www.courtaccess.org/modelpolicy/18Oct2002FinalReport.pdf](http://www.courtaccess.org/modelpolicy/18Oct2002FinalReport.pdf).

## IV. Standards Development and Approval Process

This is one kind of “**Alphabet Soup**” to digest if we want to understand the ins and outs of the development, review and approval process through which both functional and technical standards have been and will move. This is worth knowing, to understand how widely and deeply the organizations and stakeholder groups in our courts have participated.

I have drawn a very busy-looking chart (*Electronic Court Filing Functional and Technical Standards Development*, below) to show the groups and organizations that have participated in developing, reviewing, and approving functional and technical standards for electronic court filing. Many organizations and committees have had direct roles in the process and others have



given various support. Those working in related, but separate efforts are also shown on the chart. The following describes the relationships and processes the chart shows.

## **1. Review and Approval of the Functional Standards**

### **a. Getting Started**

Based upon a resolution of the **Conference of Chief Justices (CCJ)**, who head the courts of last resort in each of the 50 States, work began to develop detailed functional standards for electronic filing in the courts. The organization mainly responsible for the resulting process is the **Joint Technology Committee (JTC)**, created by two major national court organizations, **COSCA**, the **Conference of State Court Administrators**, and **NACM**, the **National Association for Court Management**, to advise them on technology. Assisted in part by funding through the **State Justice Institute (SJI)**, a committee called the **Electronic Filing Standards Subcommittee** did the initial draft of *Standards for Electronic Filing Processes*. **John Greacen Consultants** staffed this work. (NOTE: I do not have information about other funding sources that may have supported these processes.)

### **b. Initial Review**

The **Subcommittee**, having drafted the proposed *Standards...*, reported them to **The Consortium**, the **National Consortium for State Court Automation Standards**, a committee of the **COSCA/NACM JTC**. The Chair of the **Consortium**, Mary McQueen, Administrative Officer of the Courts of the State of Washington, organized and convened a **Joint Standards Development (JSD) team** to review the draft. The team met in Atlanta over two days in February, 2002. Composed of representatives from courts and vendors of many sizes and types from throughout the country, the **JSD** went over every element of the draft of the *Standards...* and gave the consultants a detailed critique and many suggested revisions. A few weeks later, after revisions had been made, the **JSD** met in a telephone conference and formally approved the revised *Standards...*, finding them suitable for nationwide implementation.

### **c. Public Comment and JTC Approval**

The **Consortium** had the *Standards for Electronic Filing Processes* published on the **National Center for State Courts' (NCSC) Technology Standards Website** ([www.ncsconline.org/WC/Publications/Tech\\_TecStdStandardsPub.pdf](http://www.ncsconline.org/WC/Publications/Tech_TecStdStandardsPub.pdf)) and an open public comment period was announced. At the close of the comment period, the **Subcommittee** reviewed the comments, incorporated some changes and published a report explaining its rationale for making those, but not other suggested changes. The revised version of the *Standards...* was submitted to the **COSCA/NACM JTC** for review and approval at the July, 2002, meeting of **NACM** in Portland, Oregon. The JTC approved the *Standards...* on July 21. A further public comment period of 90 days closed October 21, 2002. A few comments were received and, at the present writing (November, 2002), they are being reviewed by the **Subcommittee** and the consultants.

#### **d. COSCA/NACM Board Consideration**

Following the response to public comments, the *Standards for Electronic Filing Processes* is to be presented to the respective Boards of COSCA and NACM, with the recommendation that they be approved.

#### **e. Back to the Chief Justices**

Based on the expected approval by the two boards, the next step for the *Standards...* would be submittal for review by the **Conference of Chief Justices (CCJ)**. They should approve them, since the extensive review and approval process shows broad-based support. Each of the Chief Justices would then be expected to take the *Standards...* to the respective states, directing state courts that implement electronic filing and their vendors to comply with those principles, recommendations, and requirements.

#### **f. Reporting to Other Related Groups**

The process of reviewing the *Standards...* has not been a secret one. Indeed, information about it has been shared widely, including reports to “**Global,**” the **Global Justice Information Network Advisory Committee**, which exercises broad oversight of organizations and activities that relate to justice information systems in the United States, primarily in the federal government. Generally, **Global** is a *Federal Advisory Committee* that advises the **Office of Justice Programs (OJP)**, which is part of the **United States Department of Justice (DOJ)**. The final adoption of the *Standards...* will be reported to **Global**, which, among other things, would be interested in including them in a repository for standards that is being developed.

### **2. Review and Approval of the Technical Standards**

#### **a. Getting Started**

The group that formed first to work on technical standards for electronic court filing using *Extensible Markup Language (XML)* technology was **Legal XML**, which came together in 1998 at the *Court Technology Conference (CTC 7)* in Los Angeles. In November of 1999, the group met for the first time, in Albuquerque, New Mexico, and constituted itself as an all-volunteer effort to build technical XML standards for legal documents of all types. The group adopted a consensus model for decision-making, whereby if someone “could not live with” a decision, review and discussion would continue until consensus emerged. (In practice, this came to be interpreted as, “Silence implies approval.”) The group’s work began with electronic filing in the courts, since most of the founding members were officials, clerks, administrators, or vendors building or planning for such systems. John Greacen, then Administrator of the Courts for New Mexico, was selected as the chair. The group met again quarterly in face-to-face meetings at various locations around the country (e.g., Phoenix, Boston, San Francisco, Seattle, St. Louis). In time, it became clear that **Legal XML** needed more structure, so it was reconstituted as a non-profit organization, a board was organized, and staff hired.

The **Legal XML Court Filing Work Group**, the most active of the “work groups,” developed its first specification, *Court Filing 1.0*.<sup>5</sup> The scope of that proposed standard was to define an XML “court filing envelope” in which documents to be filed electronically (in whatever electronic format the court might support—always some kind of “*binary large object*,” or “*BLOB*,” like *PDF*, *TIFF*, or Word *DOC*) would be sent to the receiving court’s *EFM* (*Electronic File Manager*) application. The **Court Filing Work Group** also conceptualized and began work on related specifications to complete the overall architecture for electronic filing systems using XML. Those specifications would include *Court Document*, *Query and Response*, *Case Management System Application Program Interface (CMS-API)*, *Court Form*, and *Court Policy*. *Court Filing 1.0* was formally adopted as a proposed standard of **Legal XML, Inc.** around February of 2001.

Soon, courts and their vendors in Georgia were developing electronic filing based on that specification. Based on “interoperability tests,” which would have to be successful in at least two states, the specification might later, after modification based on learned lessons, be raised to the status of a “recommended” standard. “*Recommended*” is the highest category for a technical standard.

### **b. Legal XML’s Metamorphosis**

Legal XML’s leaders and members, in time, realized it needed more structure and support such as they could obtain by joining **OASIS, the Organization for the Advancement of Standardized Information Systems** ([www.oasis-open.org](http://www.oasis-open.org)). They could not continue to rely solely on volunteered, unfunded participation. **Legal XML** reorganized and became a **Member Section of OASIS**. Volunteers who previously had been “members” of **Legal XML, Inc.** at no cost now had to become paying members of **OASIS** to participate in and vote on specifications. A given company or government agency could have multiple participants, but each would have only one voting member.<sup>6</sup> **Legal XML** carried over its consensus model of decision-making and its intellectual property policies. Within the **OASIS** structure, **Legal XML** participants have formed several **Technical Committees**, the most active of which has been the **Electronic Court Filing Technical Committee**. Other technical committees formed as of this writing are: **Integrated Justice**, **eContracts**, **Transcripts**, **eNotary**, **Legislative Documents**, **ODR (Online Dispute Resolution)**, and, most recently, **Lawful Intercept**. Discussions are under way about creating other committees focused on criminal records, investigations, and other specialized subjects.

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<sup>5</sup> An unsung hero behind development of this specification and its successor, *Court Filing 1.1*, is Marty Halvorson of the **New Mexico Administrative Office of Courts**. I was privileged to edit these specifications, to help make them as readable as we could, but the technical work and content was all Marty’s. The friendliness, warmth, and good humor he brought to the work was essential to the success of the project. Marty always signs his e-mails, “*Peace!*” Reassigned to other duties, Marty has not been able to participate with Legal XML for quite a while. I miss him.

<sup>6</sup> It costs nothing if one wishes to join the **Public Comment** listserv for a technical committee. There, one can provide input indirectly through the technical committee’s chair. Observers can access the messages of technical committees by reading their Listserv archives, where messages are posted immediately after they are sent to the members’ Listserv.

### **c. Outside Review**

At the same time as the *Standards for Electronic Filing Processes* were being developed by the Subcommittee of the Consortium, the Legal XML Court Filing Work Group (not yet part of OASIS) was finalizing the second version of its first technical standard, *Court Filing 1.1*. Based on experience from Georgia court implementations and reflecting changes determined by a Reconciliation agreement (see below) between Legal XML and two law enforcement organizations, which had independently been developing XML standards, the new version was approved as a “proposed standard.” When Legal XML was originally formed, its relationship with the JTC for COSCA/NACM was established in its charter, promising that specifications developed in the court filing area would be submitted to them for review and approval, using the same process followed for the *Standards....* The February, 2002, meeting of the JSD in Atlanta was devoted in part to reviewing *Court Filing 1.1*. JSD members had questions that required further information to be circulated, after which they recommended approval of *Court Filing 1.1* during the same conference call where they approved the *Standards for Electronic Filing Processes*.

At this writing, the Electronic Court Filing Technical Committee has just approved two additional recommended specifications—*Court Document 1.1* and *Query and Response 1.0*. Both were submitted to, reviewed, and approved by the JSD during a recent conference call. Further approval steps will parallel those used for the first specification.

### **d. On Up the Ladder**

Along with the functional *Standards...*, *Court Filing 1.1* was referred by the Consortium to the COSCA/NACM JTC, which voted to approve it at the July 2002 NACM meeting in Portland. The recently closed public comment period also addressed the technical standards. The ultimate outcome for the *Court Filing 1.1* should be the same as for the *Standards...* and *Court Filing 1.0*—the Chief Justices will direct the state courts and their vendors to use them when implementing electronic court filing.

### **e. Next Steps for the OASIS Legal XML Court Filing Technical Committee**

The specifications that this group has developed so far have all been written in what is called a *Document Type Definition (DTD)*, one of several ways to design XML specifications. The technical committee was planning to complete the entire “family” of standards of this type before moving on to the next level. Accordingly, work has been under way toward defining requirements for *Court Policy (and Court Data Configuration)* and discussions had taken place about developing a specification for *Court Forms*. The technical committee had already decided it would write future specifications using the *XML Schema* method and specified that all “*Version 2.x*” specifications would have to be presented as *Schemas*. A schema provides greater capabilities than a DTD, such as specifying data types. The Electronic Court Filing Technical Committee will meet following the *E-Court 2002 Conference*, on December 12 and 13, at the *Clark County Courthouse* in Las Vegas. They are expected to decide whether to continue “*Version 1.x*” work on specifications or to go directly to developing “*Version 2.x*” schemas.

## **V. Chart of the Standards Development and Approval Process**

The following chart, *Court Electronic Filing Functional and Technical Standards Development*, lays out the review process I have described above. It is a “snapshot” of the process as of this writing, an overall visual depiction of what has been called the **Electronic Filing Standards Landscape**. Additional standards-related efforts, the *OXCI (Open XML Court Interface)* initiative and California’s *2GEFS (Second Generation Electronic Filing Standards)* project, are included in the chart, even though they are not directly part of the process of review and approval for the functional and technical standards that originated from the **Subcommittee** and **Legal XML**.

Errors and omissions in the narrative and this chart are mine alone.<sup>7</sup> Neither the chart nor the written process description, above, came from **Legal XML**, the **Subcommittee**, or anyone else involved.

### **An Editorial**

The number of groups working to develop standards for using XML in government, business, science, law, and other endeavors seems to be growing all the time. Not all efforts are associated with **OASIS**. Not all law-related efforts are coordinated with **Global**, **OASIS**, or **Legal XML**. There are international consortia doing similar work in additional languages. As proposed specifications continue to appear, the potential for chaos and confusion over what to follow could increase.

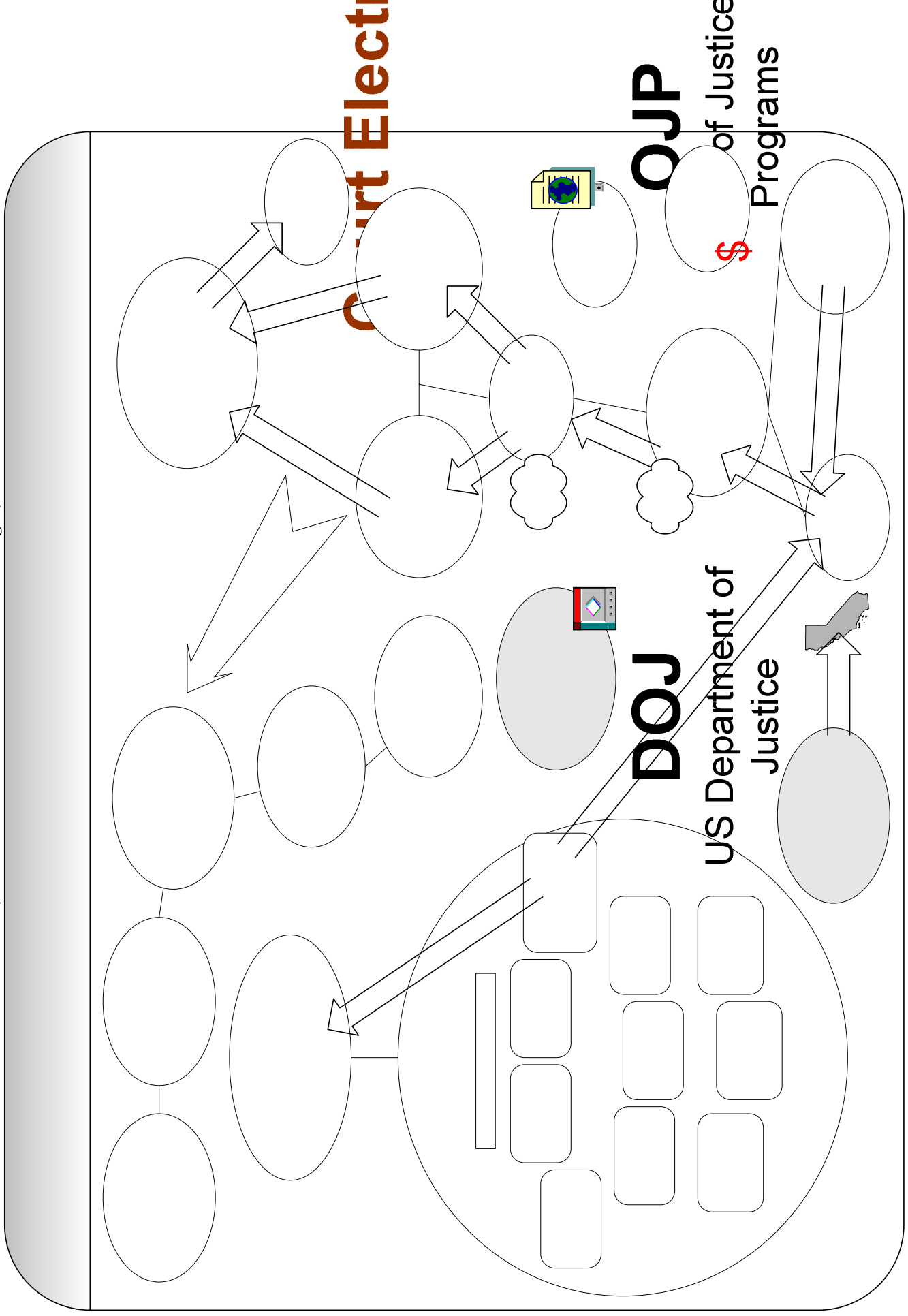
At first glance, a chart such as we have here looks horribly complex and chaotic, but it reveals a steady, step-by-step process for review and approval that requires many experts in court business, judges, clerks, and administrators, to express their concerns and exercise their power to comment or to vote to say what the standards should be. That such important standards—covering the common features all courts must have if they are to use electronic technology to change how they do business (that is, electronic filing)—came together within a relatively short period should be encouraging.

Mistakes, relationship strains, frustration, impatience, and uncertainty have been there, but so have creativity, persistence, patience, hard work, productivity, and a spirit of cooperation. The negative stuff comes and goes and is to be expected when stakes are high and the work is difficult. It is the constructive, cooperative approach that is bringing results that will serve as the foundation for each of our efforts to improve processes and services in the courts with this technology.

***Given a choice between seeing this pessimistically  
or optimistically, choose optimism.***

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<sup>7</sup> I welcome any information that could help make the following chart more complete, accurate, or easier to understand. Contact me at roger.winters@metrokc.gov or (206) 296-7838.



## VI. Content of the “Functional” Standards

The functional standards, as explained above, were developed in response to a mandate from the **Conference of Chief Justices (CCJ)**. Having called for the development of standards, they set in motion the work undertaken by the **COSCA/NACM Joint Technology Committee (JTC)** that led to the drafting, review, and approval process detailed above.

The entire *Standards for Electronic Filing Processes* is available in multiple formats at [www.ncsc.dni.us/ncsc/ctp/htdocs/standards.htm](http://www.ncsc.dni.us/ncsc/ctp/htdocs/standards.htm). Below are excerpts representing some of the more important items. In presenting material drawn from other documents, remember, my comments appear in the Times New Roman font, while the material from those documents is in the Arial font.

### 1. The Resolution from the Chief Justices

The **Conference of Chief Justices** was ready to promote use of the standards, once they were written and approved:

*From Resolution 13: Implementation of Automation Standards*

...chief justices and chief judges of the state courts of last resort have the responsibility to provide leadership to ensure that courts adopt and use technology standards...

[CCJ members are to]...

Disseminate information about ... the standards among the courts of their states;

Encourage [using] approved technology standards in state strategic plans; [and]

...When they have the power to do so, adopt rules or orders directing courts within the state...to comply with [these]...standards when procuring or developing new electronic filing and information-sharing systems or when adding these functions to existing case management information systems [and]...when procuring or developing other new applications [or]... when enhancing existing applications.

The authors of the *Standards for Electronic Filing Processes* wrote a strong and compelling statement on why courts should consider electronic filing now. They included a brief history of electronic filing efforts in the United States, which showed that the subject is not a recent fashion or fad, nor a temporary madness inspired by new gadgetry. This set the stage for a call to all courts to move forward with electronic filing technology.

## 2. From the “Standards...”—Why Electronic Filing?

### **Standards for Electronic Filing Processes**

Draft for Consideration by the National Consortium for State Court Automation Standards and COSCA/NACM Joint Technology Committee (July 12, 2002)

#### The Promise of Electronic Filing in the Courts

...In theory, filing pleadings and other court papers electronically will finally make it possible to move towards the ideal of a “less paper” courthouse, thus realizing a wide range of potential spin-off benefits for litigants, judges, lawyers, court administrators, and the general public.

...“Electronic filing” [unlike imaging alone] saves the court the cost of converting most documents from paper to electronic form by taking advantage of the fact that lawyers and other court users create most documents filed in courts using...computers. ...The drawbacks of image files...are avoided as well.

...electronic filing will achieve the following improvements in the justice system:

- Speedier processes by eliminating the time required for mailing or personal delivery of pleadings and other documents
- Greater efficiency from the instantaneous, simultaneous access to filed court documents...wherever participants may be located throughout the world
- Fewer delays caused by lost or misplaced paper files
- Increased efficiency and reduced cost from the ultimate reduction or elimination of handling and storing paper case files in courts, lawyers’ offices, and official archives
- Increased security of court records ...
- Improved legal processes...[based on the]...ease of sharing of electronic documents
- Enhanced public safety arising from electronic service of and instantaneous access to court orders (including domestic violence orders of protection) and warrants

...[Since the first projects with electronic filing]...the range of approaches attests to the fact that until recently electronic filing has remained an experimental technology...[but by now there is]...a body of experience and knowledge that can translate into guidelines to help courts and vendors avoid costly and time consuming mistakes.

...In 2002, the technical hurdles for transmitting a document to the courthouse and using it effectively in an electronic-only version are minimal. ...For more and more court users, sending an electronic legal pleading would be no more challenging than dashing off an e-mail message to a family member or making an on-line airline reservation.

The time for broad scale implementation of electronic filing has arrived. For that to happen, the judiciary needs a set of carefully crafted standards to help courts and developers make the move towards electronic filing less daunting and costly. Early adopters of electronic filing systems had to work through all of the policy and operational issues for themselves. The availability of national standards will eliminate that time and effort. Standards will also define common technology and policy approaches to ensure that, as new systems are put in place, they will be able to interoperate as a single nationwide network. ...Common systems – with



**National Center for State Courts—E-Court 2002 Conference**  
—December 9, 2002—Las Vegas, Nevada—

reusable applications and components – ultimately will mean lower costs for both purchase and long-term maintenance.

Purposes for the Standards

- [1] [promoting] ...a “full service” model of electronic filing ... [with full use of electronic documents, service, etc.];
- [2] ...maximum incentives for use and acceptance by courts and lawyers...;
- [3] ...a “road map” for vendors to use [for relevant products] products;
- [4] ...[guide] court systems that wish to move into electronic filing but have hesitated to do so because they lack experience or expertise;
- [5] ...encourage all...courts...to make the most complete transition possible from paper to electronic records...; and
- [6] ...[make possible]...a national electronic filing network – so that lawyers and citizens can file and access documents in courts throughout the country using the same basic technological approach and encounter consistent functionality, with compatible protocols and rules.

...Experience has shown that courts and lawyers implement electronic filing gradually and do not immediately realize the full benefits. A number of systems have failed due to a lack of interest or commitment on the part of users and administrators soon after a much-publicized start-up. Ironically, the positive aspects of electronic filing are realized only as more and more lawyers and other court users participate in the process (thereby decreasing the number of documents that court staff must convert from paper to electronic) and as more and more courts institute such systems as a routine part of their operations. The end result of such growth and acceptance will be the evolution of electronic filing from a local court and media curiosity into a standard way of doing business among all members of the civil and criminal justice communities. ...

The scope of these standards is: the creation of court documents intended for filing as electronic court documents, their transmission to a court, their review and acceptance by a court, their maintenance and use within the court and by users of court documents outside the court, the security and integrity of electronic court records, and the functions of court case management and document management systems needed to support electronic court records.

These standards do not attempt to define all the functionality required for court case management or document management systems. These standards do not address court policies for access to, or privacy of, electronic court records.

The standards are titled *Standards for Electronic Filing Processes* rather than “Standards for Electronic Filing” to avoid the unintended connotation associated with the term “electronic filing” that may be interpreted as referring only to the process by which documents are submitted to a court for filing. That is only one part of a mature, full-blown electronic documents process. Focusing only upon the initial filing aspect runs the risk of losing most of the potential benefits of electronic filing. At the extreme, the failure to look at electronic filing as part of a much larger process can result in an expensive system that is of little utility to court users such as judges,

lawyers, litigants, and court staff. *Electronic Filing Processes* is also preferable to “Electronic Court Documents” which might apply simply to court imaging systems that create electronic documents by scanning paper filings. “Electronic Court Documents” would also include standards for document management systems, which are not within the scope of these standards. *Electronic Filing Processes* incorporate scanning of paper documents, but only as an ancillary process for capturing historical documents not created for the purpose of litigation and for converting paper documents submitted by parties incapable of using electronic filing means. An *Electronic Filing Process* relies upon submission of the great bulk of documents in electronic form without requiring the routine use of paper at any step in the process.

The standards are designed to apply to federal and state appellate as well as trial courts and to courts of limited as well as general jurisdiction. They are also applicable to administrative law tribunals. References to courts and court staff include clerks of court, who in a number of states are separately elected public officials, and to their staffs.

The term *Electronic Filing Processes* incorporates not only application components for receiving and processing documents received in electronic form, but also the case management information systems and document management systems with which these applications interact. However, these standards do not attempt to define functional or other standards for either case or document management systems for courts. Nationally applicable functional standards for case management information systems have been established and are available at the National Center for State Courts Technology Standards web page (<http://www.ncsc.dni.us/ncsc/ctp/htdocs/standards.htm>). They may also be accessed from a link at the National Center for State Courts home page at <http://www.ncsconline.org>

These standards are not limited to purely technical matters. The many electronic filing projects throughout the country have already produced many valuable lessons that courts planning such projects should follow; the policy standards and commentary accompanying them incorporate those experiences. Ultimately, lawyers and other court users will benefit from consistency in the court rules and policies governing electronic filing from jurisdiction to jurisdiction.

It is not the purpose of these standards to define everything at the technical level of specificity needed for a nationally interoperable electronic filing process. ...[T]hese standards do not attempt to define measurable business objectives for electronic filing projects. ...experience is not yet sufficient to define national benchmarks for electronic filing project performance.

The Policy Standards are presented in the format of “black letter” standards and commentary. The “black letter” is the operative portion of the document. The commentary explains the “black letter,” suggests best practices in its implementation, and sets forth any limitations or caveats to the universal application of the “black letter.” The functional standards have a similar structure, with formal statements of functionality accompanied by non-binding commentary explaining the functional statements....

### **3. The Functional Standards (with comments)**

There are three main sections in the *Standards for Electronic Filing Processes*: **Policy Standards**, a **Conceptual Model**, and **Functional Standards**. These are described as:

A set of **Policy Standards** that include suggested rules and policies for courts to adopt in order to best achieve the goals of electronic filing processes.

A general **Conceptual Model** of the electronic filing process to better explain the interrelationship of various entities and systems for successful operation, and

**Functional Standards** that set forth the requirements for automated applications to achieve nationally interoperable electronic filing systems in courts.

The items presented and discussed below are **policy** and **functional** standards that I believe particularly important to call out. When implementing an electronic filing system, it is necessary that the court should review every standard in detail, not just those identified here. I will skip over the **Conceptual Model**, since discussing it is to discuss the **Technical Standards** of the **OASIS Legal XML Electronic Filing Technical Committee**. That discussion follows this section on functional standards. In that discussion, I try to present the technical standards in a less complex way than they appear in the **Conceptual Model** here.

Comments on the key **Policy Standards** presented here (in Times New Roman) are my own. The discussion of each contained in the **Standards...** is well worth reading and I commend those comments enthusiastically to you:

#### **a. The “Policy Standards”**

1.1A “Official Court Record” – The electronic document will be the official court record. Paper records, if maintained, will be considered a copy of the official court record.

In King County, we maintained paper and electronic versions of the case files for about a year and a half following implementation of the **Electronic Court Records (ECR)** system. From the beginning, we made it clear that the images would be treated by the Clerk’s Office as the official “original” documents. Given availability both to paper and imaged versions of a document, clerks were instructed to make certified copies only from printouts from the images. After experience showed a 74% reduction in use of hard copy files in the first year, and once we had reached agreement with our judges on practices we would follow to preserve certain types of documents in hard copy, as well as images, we were able to change our practices and eliminate retention of hard copy for most documents. With important exceptions that have been well defined (e.g., original wills, very large documents, certain specified case types), we retain hard copy for 30 days following imaging, quality checking, and indexing into the ECR system. After that time the hard copy is ready for destruction, with the images from every document retained and readily accessible through ECR.

Our experience with dual systems was difficult. Extensive overtime meant high stress for staff. The time and savings to be gained by using imaging were not forthcoming until paper retention ended. The most important thing we did, in my opinion, was to make it clear from the beginning that the images in the clerk’s electronic document management system were the official record.

1.1C “Technical Requirements” – Courts will use Internet browser, [XML], web services, and World Wide Web Consortium recommended standards for electronic filing processes.

These are the most important fundamental technical requirements. Using browser-based systems avoids or minimizes the need to install special software on user computers, avoiding a major expense and disincentive to use electronic filing. The **World Wide Web Consortium (W3C)** has become well established as the premiere world entity for articulating standards for Web technology. Adopting something proprietary that does not follow this policy would make one “an island of technology.”

1.1G “Identity of the Sender” – Courts will authenticate the identity of persons interacting with its electronic filing system.

This policy is well founded in seeking to ensure that authorized, legitimate persons use electronic filing systems to do what they are intended for. Some have questioned how authentication of identity would work. These standard do not answer questions of “how.” Exposure to the outside world by opening the door to electronic filing and other interactions can be a dangerous undertaking. Many security issues must be addressed and security will remain an ongoing issue. Courts may question what “authentication” means, noting they do not check ID when filers present hard copy documents.

There is a general principle that new technology should not be subject to higher standards than traditional technology. This leads to some resistance to ideas that might give a court or clerk new duties just because document filing becomes electronic. These are serious questions. They should, I believe, be answered in terms of practical necessities. They should not be answered based on fears or uncertainties some may have in confronting new technology. It remains to be seen what the practical answers on authentication of persons will be.

1.1H “Integrity of Transmitted and Filed Documents and Data” – Courts will maintain the integrity of transmitted documents and data, and documents and data contained in official court files, by complying with current Federal Information Processing Standard 180.1 or its successor.

Comments on this policy raised concern over the seeming requirement to verify every incoming filing to prove that it arrived at the court’s system without any changes having been made since leaving the author’s hands. The federal standard mentioned would require that a type of software process be run on each document to show no electronic differences between what was sent and what was received. Is this an instance of a new duty, since clerks don’t now review incoming filings against what left the law firm’s office? Is it a higher standard based on distrust of electronic messaging technology? Is this a reasonable, simple, and prudent step? These questions will have to be addressed as courts interpret and implement this policy standard.

1.1K “Court Control over Court Documents” – Whenever a court’s electronic documents reside on hardware owned or operated by an entity other than the court, the court will ensure by contract or other agreement that ownership of the documents remains with the court or clerk of court. All inquiries for court documents and information will be made against the current, complete, accurate court record.

There is a risk that some courts will fail to take proper care to maintain the control called for here. Some vendors provide very low-cost (to the court) systems for electronic document storage and retrieval and retain the documents on their own servers and maintain control over access to them. While the court might pay little for such systems and might be given relatively unfettered access to the records, the vendor may be collecting fees for allowing access to records to lawyers and the public. Our belief in the importance of this principle led King County to develop ECR based on in-house retention of the images on disks in systems owned and operated by the clerk. The issues of fees are reviewed in other standards. The question of control over records is a fundamental one that must, I believe, be answered in accordance with this policy standard.

**1.2A “Service of Filings on Opposing Parties” [Text omitted.]**

It is very important to have strong incentives for lawyers, firms, and other litigants to use electronic filing systems and services. This recommended rule urges courts to allow litigants to serve opposing parties or counsel electronically. The way in which this rule recommendation was drafted, assigning the court a role in the service process raised issues with our court. It is important that issues like this not get in the way of the fundamentally important principle that litigants, too, deserve to benefit from electronic processes such as the courts create. If not supporting electronic service, courts will reduce the incentive for most litigants to participate.

**1.2C [When document is considered filed], 1.2D [Available hours for filing electronically], and 1.2E [Remedies when electronic filing fails]**

These court rule related issues are often raised by people on first hearing about electronic filing. There seem to be two schools of thought over the availability and assignment of the time of an official filing: One holds that current rules should apply to electronic filing in the interest of fairness to those without the technology to do it. They would keep current deadlines, so an after-hours filing would be counted as filed the next court day. The other holds that a major incentive for adopting electronic filing is the ability to file whenever ready to do so, even in the middle of the night. These issues will be debated and resolved in each court—I predict—with a variety of results. The issue of what the remedies will be when electronic filing fails is an important one, for people are understandably nervous about the prospect of missing an important deadline because of a power outage or system failure. Together, these issues indicate there will be an adjustment period as people become used to filing electronically and learn the lessons and problems from practical experience. While it may be that general comfort will develop, just as it has with ATMs and cell phones, it is important to remain sensitive to the people who voice these concerns (and those who see new possibilities) as court rules and practices are determined.

**1.3D Maintaining Supplementary Scanning Capability – Courts will ensure that all documents in electronic cases are maintained in electronic form. Consequently, in voluntary electronic filing processes, courts will scan paper documents and then file them electronically.**

Most courts will likely see papers filed from time to time indefinitely. Some people do not have the technology or the ability to use it to create word-processed documents or to file electronically. Even when courts provide kiosks and other services for them to use, people may not be able to do so for a variety of reasons. Litigants may send paper filings by mail, from overseas, from within prisons, or otherwise, simply because they cannot do otherwise. It is

important to balance the eagerness with which we want to move everyone forward into the fully-electronic court record and document environment against our willingness to accommodate everyone. There is no shame in not being an adopter of new technology, no special nobility in using it. There are some document types that courts need to consider carefully regarding the appropriateness of maintaining them as paper. What do we do with original wills signed in traditional ways? What about bonds and other negotiable instruments? What about documents with historical value?

Important records management and preservation issues remain, though electronic document technology marches on.

**There is no shame in not being an adopter of new technology, no special nobility in using it.**

**1.3F Eliminating Unnecessary Paper Processes** – Courts will eliminate paper processes that are obsolete or redundant in an electronic environment.

This is a principle in which it should be hard to find room to object. However, there may be processes that some see as unnecessarily paper-based but others do not. It is important, when applying a principle like this, to recognize the value-laden words like “unnecessary,” “obsolete,” or “redundant,” and to seek concrete reasons and criteria for maintaining or eliminating a practice on which strong differences of opinion exist.

**1.3H Archiving Electronic Documents** – Courts will maintain forward migration processes to guarantee future access to electronic court documents.

Strategies for long-term preservation of electronic records, stability and reliability of electronic storage media and systems, and policies on “migration” are hot topics among records managers and technologists dealing with electronic document and information systems. The stakes are very high when records must be retained long-term or even permanently. Professionals in the records management and archives fields are ready to work out solutions, where they initially took positions warning against using electronic systems for records. The issues they raise are serious and the solutions can be expensive. Sometimes a recommendation like building a “hot-swappable completely operational mirror of your system that is in another city that you can switch to on a moment’s notice” or “maintain paper records along with the electronic version” are simply too expensive to consider. The challenge, however, must be faced, to maintain electronic court records so they will be continuously accessible using contemporary, supported computer technology. If one can’t do that, the records will be, in effect, lost.

### **c. The “Functional Standards”**

#### **3.1-General Court Standards**

These mandatory standards are to make sure everyone supports not just XML based standards, but those approved through the **COSCA/NACM** approval process (described above). It is worth noting that it is expected that part of this will be a free-of-charge method for a would-be filer to discover the court’s policies and practices as they affect court filings.

### 3.2-System Architecture

While these mandatory standards also call for compliance with the adopted **COSCA/NACM** standards, they also call for support of mass filing capability and disaster recovery and rollback functionality. Without mass filing capability, ***Electronic Filing Service Providers (EFSPs)*** would not be able to participate in a court's electronic filing program and their customers would be forced to continue to file traditional paper documents.

### 3.3-Electronic Documents

Every court will have to specify how it handles dates and times for filings, the types of electronic documents it accepts for filing, and a way to accommodate non-electronic documents. The optional function of including such things as transcripts, exhibits, and multimedia presentations may cause some concern among those who believe the case file should not be mixed with such objects; on the other hand, it may help to inspire some to try to design their electronic systems to accommodate all of the kinds of documents and other sources of information that relate to the court's business.

### 3.4-Document Integrity

It is clear that worries about the integrity of electronic documents are widespread at this point in the evolution of information technology. Requiring the verification methods specified here may strike some as excessive, driven by anxiety more than by necessity. Others feel that such checks against the failures of technology and the unknowns of people's capability to do mischief with electronic records are essential, certainly at the beginning and perhaps always.

### 3.5-System Security

Some who specialize in network and system security say that data is always at risk due to the weaknesses inherent in Internet technology and the ingenuity of those who want to invade and undermine systems. In the court environment, there is concern over the potential power new technology might provide some who are able to exploit it to change records, halt proceedings, or otherwise subvert the justice process. No court can take security issues lightly. Funding for security procedures and practices may be a major ongoing part of system expenses. Validation of identity and control over access privileges for users of electronic records are substantial challenges that must be met due to the extent of confidential, sealed, and secret information handled in our courts.

### 3.6-Signatures and Authentication

The functional standards here require that the court have rules and practices that define how authentication of users and signatures are to be handled. It does not prescribe a particular method or policy for it. Some courts are implementing expensive digital signature systems, others require users to register before using their systems, and others allow a person's user ID and password to count for the signature. A frequent question for those new to the subject of electronic filing, how signatures are to be handled will be a hot button for many people. Courts are well advised to weigh carefully the advantages of complex digital signature methods against their costs and the

convenience of minimal signature verification against the problems and fears people have about them.

### 3.7-Case and Document Confidentiality

In paper systems, courts rely on practices and procedures they believe to protect the confidentiality of information in records (e.g., sealing documents into envelopes, locking them in vaults, requiring picture ID before granting access). The alternatives for electronic filing and document systems have to be discovered, implemented, and they must succeed. Otherwise, it will be hard for the court or litigants to trust new technology with this important function. Nevertheless, electronic document technology brings the court powers it has never had to strengthen control over access to such records and even to enhance it. For example, a person's privilege to view sealed records can be controlled at a higher degree of granularity in electronic systems, where very specific access rights can be defined; compare this with paper systems where one either is allowed in the sealed file area or one is not.

### 3.8-Acceptance and Rejection of Filings

Another frequent source of questions about electronic filing is concern over the conditions affecting a filing's being accepted or rejected by the filing system. The functional standards call for systems to present information in a receipt of acknowledgement when a filing has been accepted. The rules and procedures for rejection need to be well explained to reassure new filers that their risks due to the technology are not much different than they were with paper.

### 3.9-User and Service Registration

This standard calls for methods to register and authorize users in the court's system. Some courts have extensive registration requirements and procedures as part of their systems. Others have a more open policy, allowing for self-registration without having to be reviewed by the court before doing e-filings. Experience is likely to reveal what practices are too loose, putting the court system or records at risk. It may not tell much about what practices constitute overkill, except to indicate which are costly enough to warrant a second look.

### 3.10-Court Payments

It is certainly intended that all aspects of filing court documents should be supported in electronic filing systems, including accepting payments. Sometimes the ability to do this is constrained by factors not in the court's control, such as its ability to access credit card services or other ways of managing payments. Courts should continue to work on this issue until they have found the way to provide a full-service electronic filing program.

### 3.11-Submission of All Filings

These provisions are to ensure that filing processes work as smoothly as possible by providing ways to check filings for completeness and correctness as they are submitted. Filing systems should not be passive "in-boxes" into which any electronic documents can be dropped. Incoming filings should be checked electronically to ensure they meet basic requirements, such as correct



case and number, format, and otherwise. This will minimize later rejections due to factors that could easily be verified by automatic processes.

### 3.12-Case Opening Filings

Many courts find it hard to support electronic filings that initiate cases because of the special complexities involved: no case number is yet assigned, extensive data to set up the case in the court's case management system has to be located in the document, and other important procedures may occur at this point (e.g., issuing a case schedule or instructions about service or other court rules). Solving those problems will be important to the ongoing success of the system.

### 3.13-Subsequent Case Filings

These standards are optional because the technology is not mature enough to expect every court to be able to support docketing and other review of filings in existing cases without human intervention. When it is possible to process routine filings by automation, however, courts will realize substantial savings from eliminating unnecessary labor now used to key in information that already has been typed into the documents and from correcting mistakes due to human error in the data entry work.

### 3.14-Service and Notice

While it is clear that electronic service and issuance of notices from the court and clerk will constitute substantial time- and money-saving steps for litigants and for the courts, it is not clear how this will best be organized. The functional standards as drafted call on the court to provide records about service requirements and to generate service proof that courts may not provide now. Nevertheless, each court needs to do all that it can to ensure that service and notice can be achieved electronically or face the prospect of having only limited use of its electronic filing services.

### 3.15-Judicial Consideration of Drafts

These optional standards relate to incorporating functions into an electronic filing system that allow judicial officers to receive and process draft documents submitted electronically for their use. While the idea of integrating such functions with the clerk's systems for maintaining custody of the record may lead to some opposition, the desirability of providing for all document related services within a court in an integrated application is clear. These standards are optional because there is no clear path toward providing these very desirable services that will have high appeal for our litigants and our judges.

### 3.16-Clerk Review

These mandatory standards make what might seem an obvious point, that it must be possible for clerks, human beings, to review electronically filed documents before they are made part of the case record. While the majority of documents may need no action beyond basic docketing and indexing in the case file, the rest require some process by a clerk or other person before the

document is filed away. Systems cannot ignore the necessity of human review of electronic records as needed.

### 3.17-Court Initiated Filings

Sometimes we forget that electronic filing is not going to happen in one direction only, from outside filer to the court. The court itself is a filer of documents, as when notices are issued by the clerk or orders by the judge. Electronic filing services must be available to the court and clerk, for they too are filers. Court initiated filings are likely to be a special case. If they exist only in electronic form, they may require signing with digital signature software or other tools if the orders are to be acknowledged and obeyed in the field. The equivalent to certified copies of orders and other court case documents has not been invented yet.

### 3.18-Requests for and Responses to Requests for Case Information

Systems must be able to respond to inquiries, from potential filers and the EFSPs that they use, to find out what they must know in order to file. While a system might not be able to deliver responses to every possible type of request by automation, it needs to be able to respond with information for the most basic queries. Such queries are identified in these standards and in the ***Query and Response*** specification published by the **Legal XML Electronic Court Filing Technical Committee**.

### 3.19-Integration with Document Management Systems

Perhaps this could have gone without saying, but it is a fundamental principle that electronic filings need to be included in the files, and this means they need to become part of the electronic document management system that is used for court files. Systems must be properly designed to ensure that documents enter the document management system appropriately and that they are properly integrated with the filing and retrieval system used there.

### 3.20-Integration with Case Management System

Just as filings must be linked with document management systems, they must be related to the court's case management system. Documents are, in a sense, containers of data that case management systems will need to extract (by human data entry or by XML automation) for many purposes. This standard makes that point explicit.

### 3.21-Judicial Information Sharing Among Courts, Including Appellate Courts

Often the method of sharing records with other courts is cumbersome and paper-intensive, requiring complicated certifications and other practices. With electronic records, the opportunity exists to smooth the way to share records electronically. These optional standards are challenges to courts to take advantage of their electronic records technology to build bridges for routinely sharing access to support all judicial processes.

### 3.22-Document Retention and Archiving

These mandatory standards should remind courts and clerks that they have always had responsibility for observing specified retention requirements and for archiving their records properly. Electronic systems and media bring new challenges and new capabilities to help courts and clerks perform these duties. The heightened attention given to retention and archiving issues due to the introduction of electronic systems is a healthy reminder of an often-neglected area of our business.

**No system will be “final,” for all will require continuous upgrades and changes as our technology changes.**

### 3.23-Related Technical Considerations

These standards direct courts to use browser and Internet technology and comply with **World Wide Web Consortium (W3C)** standards, and otherwise to stay in step with contemporary technological services and principles. This is important advice. No system will be “final,” for all will require continuous upgrades and changes as our technology changes. This has been our experience since we sat down at our first PCs; there is no reason to expect the future to give us changes that are any less substantial or fast moving.

## **VI. The Technical Standards of *OASIS Legal XML***

### **1. Concepts and Buzzwords**

It helps to get the “lingo” down, to understand more than superficially what electronic filing technical standards are about. Terms of art have rather precise meanings in the ***Legal XML Electronic Court Filing Technical Committee***’s conceptual design and the technical standards they are writing. These same terms are also used to describe business functions in court electronic filing systems. The following descriptions for these terms are not meant to be a Glossary. Both the ***Legal XML*** and the ***California 2<sup>nd</sup> Generation Electronic Filing Standards*** groups provide glossaries with more precise definitions than these. This is my effort to describe not just how the terms have been used, but what they mean, how they fit in the process of electronic filing under the proposed ***Legal XML*** standards, and why they matter to courts.

#### **a. Extensible Markup Language (XML)**

***XML*** is a technical language (not software), providing a method for “tagging” data items in a document, database, message, and so forth. The “tags” indicate the semantic meaning of the data items, not how they are to be displayed. ***HTML, HyperText Markup Language***, also uses “tags,” but they relate to setting up Web pages. HTML does not define the data items; it directs how the data is to be displayed or processed by a Web browser. XML in court applications will include tags (which the justice community has to define and assign) for things like the names of parties, court locations, case types, criminal charges, and much, much more. The general idea of XML is that when two different systems use the same data item (or “data element”), once both have had their data fields “mapped” to the same XML standard, the data items can be transferred

between them in XML messages or documents. Re-keying data entered already in one system in order to put it into another system would be eliminated in favor of automated data sharing. (NOTE: This explanation is at a very summary level. If you wish, you can get very involved in the world of XML and related matters, tools, and uses. Try [www.xml.org](http://www.xml.org) as a starting point.)

### **b. Electronic Filing Manager (EFM)**

Any court receiving electronic filings has to have an EFM system, which is a software application (whether off-the-shelf or custom-made). That is not to say the court must build and operate it on its own; some vendors provide the EFM for a court to buy, and some go further and receive the filings, acting as the court's EFM by getting them ready for the court's systems to process. An EFM has to be able to receive and interpret messages that contain electronic filings, so it must use standards that describe and define everything necessary to accomplish its tasks. The job performed by an EFM system includes receiving electronic filings sent to it, checking them for acceptability (e.g., being virus-free, directed to the right court, and in an accepted format), rejecting unacceptable filing attempts, emitting messages acknowledging filings, recording data (such as date and time of receipt), and processing the received filings and related data so they will be suitable for the court's next steps for handling them.

### **c. Case Management System (CMS)**

Every court has a CMS, whether called that or not. The CMS could be a single system that is custom-made for one court, a system many courts share (e.g., a statewide application centrally administered), an "off-the-shelf" system, a custom system from a vendor, or a combination of several systems, each doing part of the work of a CMS. The work that is done inside a CMS includes review of filed documents, indexing (or docketing) them so they can be identified with their cases and retrieved, routing them for special processing (such as entering something in a court calendar or recording a payment in a civil judgment), and putting them into the court's official case files. Electronic filing standards do not deal with how to set up a court's CMS. They do have to define a standard so each system designer will know where the software will interact with any *Application Program Interface (API)* necessary to bring electronic filings and associated data (and *meta-data*<sup>8</sup>) in, to hand it off to the CMS for processing. The court's *DMS (Document Management System)* is a component of its CMS.

### **d. Document Management System (DMS)**

Every court has a DMS, whether called that or not. Sometimes this is called "The Files," "Vault," or "the imaging system." Electronic filing technical standards do not cover how to build or operate an electronic document management system. The functional standards for electronic filing strongly recommend that the court develop an electronic DMS. However, it is conceivable that a court could receive electronic filings and, because it had no resources for an electronic DMS, would then print them out onto paper and put them in a traditional hard copy case folder filing system. The technical standards for electronic filing do not specify how electronic

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<sup>8</sup> "Meta-data" is data about data. It is something that has information related to a data item or element. "Tags" are meta-data for the data elements to which they refer.

documents, once filed, are to be managed, maintained, distributed, secured, and retained. The functional standards include principles and practices that apply to operating an electronic DMS, but they do not specify technology a court must use to implement them.

#### **e. Electronic Filing Service Provider (EFSP)**

Documents are submitted for filing by the court itself, by the clerk, by the prosecutor and defense, by agencies, by attorneys, law firm staff, and by individual litigants. Sometimes the one who has prepared a document for filing takes it to the Courthouse and drops it off at the clerk's office. Often, delivery is done by a messenger service, from the law firm, office, or a company specializing in delivering court documents. When electronic filing is in place, there must be electronic systems to prepare and send the electronic documents to the court's EFM. A court itself might choose to be an electronic filing service that anyone can use to file.<sup>9</sup> A court could select a vendor to provide this service on its behalf, routing documents originating in the court system to the EFM. Private, for-profit EFSPs will provide e-filing services to lawyers and others who would not want to go through the filing steps alone. As with messengers handling paper documents, experienced EFSPs will be more attractive for e-filers to hire, because they will be able to get filing done quickly and correctly. Alone, a filer might find the filing tasks involve too much trouble and time. EFSPs will provide "value adds," increasing their customer appeal. Since technical standards will be used, courts would not have to be concerned about whether a filing arrives from a lawyer's linking directly to the EFM or from sending it in as part of a batch of filings from the lawyer's EFSP. Larger law firms will have in-house EFSP-type systems to perform the electronic filing in all of the courts where the firm has cases.

#### **f. Electronic Court Filing Envelope**

This is the principal subject of the *Court Filing 1.0* and *1.1* specifications developed by the **Legal XML Electronic Court Filing Workgroup/Technical Committee**. The envelope is a standardized XML structure created just to submit electronic documents for filing. The documents themselves are not necessarily written in XML; they may be any electronic format the court accepts. Today, many courts with electronic filing systems are accepting documents that are in the **Adobe Portable Definition Format (PDF)**. The envelope is strictly structured to contain needed data elements specified in the *Court Filing 1.x* standards, so filings can be conveyed to the court's EFM in a standard way. EFSPs would use the same envelopes for filing electronic documents with any court that uses the standards.

#### **g. Interoperability**

This concept describes a major result that technical standardization in electronic filing is to achieve. Using the standards, a litigant or vendor (EFSP) must be able to successfully file documents electronically in more than one court. The courts must be in different jurisdictions or even different states. Another measure of successful interoperability is when one court receives

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<sup>9</sup> King County's design for electronic filing includes providing basic filing services itself, but it will also allow for private EFSPs to submit their customers' filings in bulk.

electronic filings successfully from more than one EFSP. Without technical standards, there would be no basis for interoperability.

### **h. Query and Response**

This aspect of technical standards for electronic filing is to ensure there will be a regular, predictable mechanism for an EFSP to submit requests for information (queries) to a court's electronic filing system (EFM), expecting standard types of responses. An EFSP wanting to send a client's filing to a court it has never filed with before will need to get data about the case to do so. This technical standard defines the types of queries, seeking data about the calendar, case details (e.g., identification number), names of the parties, and so forth.

### **i. Court Policy and Case Data Configuration (CDC)**

This part of technical standards relates to an EFSP needing to obtain information from a court about what it does and doesn't accept as electronic filings, what differences from the standards it has in its systems, how data elements have to be formatted to be accepted, and other technical details. Policies, like the times when the court is "open" for electronic filing, whether documents that initiate a case or require a fee can be filed electronically, and other local details tell how the court complies with and varies from the standards. The policy and data configuration information variances reflect the given court's system design, court rules, and other local conditions affecting what can and cannot be done, and how, in their electronic filing transactions.

## **2. The Technical Standards at Work**

What follows is my attempt to describe in words what is depicted in rather complex diagrams in the *Standards for Electronic Filing Processes*. I believe it has sometimes been difficult for the authors of these technical standards to explain them to non-technical audiences. Concepts and details that have required considerable discussion and debate while technical standards were developed have sometimes been over-explained before people for whom the issues involved are not so significant.

Communicating about technical standards is a tricky business. Often, everyone in the room seems to imply understanding by nodding their heads or not asking questions. Individuals who need to ask questions may not because they have the erroneous perception that they alone "don't get it." They may go away from such presentations feeling they can only defer to those who "seemed to know what they were talking about." They withhold not only their questions about the technicalities but also insights and information they might have shared about judicial process, operations, and other business experiences. Standards for the courts need to reflect both the technical expertise necessitated by the technology involved and the business expertise about the way courts work.

The following descriptions of the components of the "architecture" for electronic filing systems as developed by the **OASIS Legal XML Electronic Court Filing Technical Committee** are how I understand them. I am neither a computer scientist nor a programmer nor an expert in XML. My knowledge of court business reflects my position within the office of a clerk of court

for the past fourteen years. My descriptions will be incomplete or inaccurate, technically, but I hope they nevertheless succeed in helping non-technical readers to understand what they are about.

Remember, in dealing with technical information, the first question to ask is:

***“How much—if anything—do I really need to know?”***

These descriptions are high level descriptions of the different specifications written or planned for the “**Version 1.x**” standards. Even though the functions and processes will be divided and organized differently in the “**Version 2.X**” schema-based specifications to come, the whole story will remain essentially the same.

### **a. Court Filing**

The job of the “XML electronic envelope” that is the principal subject of the **Court Filing** specification is to describe how to build a standard container for sending electronic documents to a court for filing. Each envelope would have the same basic structure and carry similar “meta-data” needed to accomplish the filing transaction. In a way, each envelope constitutes a “cover sheet” for the filings it contains. The format for the electronic documents to be filed does not matter to the envelope—filings might be PDF, XML, TIFF (images), word-processing, or other formats, depending on the court—but the envelope is always constructed in XML.

Each envelope was defined as being able to include any number of filings provided they are intended for a particular case in a particular court. To file in multiple cases in the particular court, multiple envelopes would be needed. Each envelope, then, would contain information about the court and about the case, so the systems through which the envelope would pass (from an EFSP to an EFM and, finally, to a CMS) could tell what they would find inside. Each envelope would contain one or more filings for the one case. Each filing inside the envelope would contain basic information about the court, the case, and the filer. The filing would also contain information about its document and any attachments to it. Sitting outside the document itself, all of this “meta-data” in the court filing envelope would be available for the court’s programs to locate, interpret, and process. Once a document was received for filing and passed into the court’s **Case Management System** for storage in the **Document Management System**, the work of the envelope would be complete. The envelope then could be saved or discarded, as the court wished.

Another essential job of the specification is to check the filings for basic acceptability, assign appropriate date and time information, and generate data that can be relayed back to the filer (or at least to the EFSP the filer used) acknowledging the receipt of the document(s) by the court. Accordingly, the specification explains the data elements that are to constitute that acknowledgement.

### **b. Query and Response**

This component is to define “standard queries” that pertain to electronic filing transactions. In the paper world, before filing a document in a new court, one might call the clerk’s office and ask what case numbers they have associated with a particular litigant name, what calendar dates relate to the case in which one is to file, what other litigants are in the case, and so forth. Since every court’s case data system is likely to be different, to make it possible for an EFSP’s filing system to discover information it would need by an automated query (rather than a human being getting someone on the phone), there would have to be standards. EFSPs will have to be able to find out how to structure the queries, what data elements they could ask for, the types of responses they might expect, and how they would need to format the data making up the query.

They would also need to know how their software making the query would be expected to interact with the court’s own systems. Another specification, called *Case Management System (CMS)-Application Program Interface (API)*, was combined with this one. The tasks performed under *CMS-API* relate to ensuring there will be standard interfaces at key points where an electronic filing query or application will meet the court’s Case Management System. EFSPs and filers need to know what the standard software interfaces and routines (APIs) will be so they can transact the necessary information exchanges. This specification got a great deal of attention from application developers and vendors because the technicalities of the interface standards would greatly affect their ability to implement compliant products. (I do not pretend I have understood the technical details of this—I do not think I really need to; this may be true for you!)

### **c. Court Policy and Court Data Configuration**

Originally planned as two specifications, when combined these covered similar kinds of information. In general, a court’s “policies” are the

**It would be foolish to require every would-be filer to call the clerk to find out such technical details...**

local rules, technical requirements (e.g., how data elements are configured), extensions to the standards, and statements explaining what the court does and doesn’t support or allow to be filed electronically. A court may not be able or willing to accept electronic filing of documents that require a fee payment. That would need to be evident from checking the policy specification for that court, so EFSPs and other filers would be able to know that ahead of time and avoid having their effort to file rejected. Different courts will have different rules on when a person is allowed to file electronically and on how the date/time of a filing is officially assigned. Courts have certain ways of styling their case numbers, captions, and the other data elements they use, and those details need to be available in this specification, so new EFSPs and filers can know them in advance. Courts may use special codes, another example of the kind of “data configuration” information that needs to be published in this specification. While not every local court rule would be embodied in this technical specification, those that affect, expand, or constrain the filing process for the court vis-à-vis the standards must be discoverable electronically. It would be foolish to require every would-be filer to call the clerk to find out such technical details as can be instantly discovered by referencing the XML policy document. An important additional part



of this specification is information on how an EFSP or filer can discover when a change has been made in the court's policies.

#### **d. Court Documents and Court Forms**

These specifications are to describe how a filed document written in XML would be structured and how information in it would be tagged, so the court's systems could use standard methods to locate and act on that information. Some of the dimensions of a court document are common to almost every filing—information about the court, a case identifier like a case number, the caption (e.g., "Smith vs. Jones"), a place where signatures are affixed, the signatures, and so forth. Other dimensions of a court document are structural, including elements like paragraphs, subparagraphs, footnotes, tables of authorities, and so forth. These fundamentals were addressed in the *Court Document 1.1* specification that the **Electronic Court Filing Technical Committee** approved recently as a "recommended standard." Further specifications that relate to the specialized terms and data elements used in the many kinds of case and document types found in a court system were not attempted in *Court Document*. The work on such detailed content was instead assigned to a *Court Forms* specification that is not yet in process.

#### **e. Summary**

The above specifications make up a sort of "family" of XML documents (*Document Type Definitions*, or *DTDs*, for the "*Version 1.x*" level; *XML Schemas* for the "*Version 2.x*" level). Those specifications are to provide the technical and business information necessary for an electronic filer, electronic filing service provider, and a given court accepting electronic filings to do business electronically. Using the **Legal XML** standards, an EFSP, firm, or other filer would be able to perform those transactions successfully and through automated means. From the filer's point of view, every court would be "doing electronic filing" in a standard way. Each court would be requiring an XML envelope that contains the electronic document(s) being filed. There would be standard exchanges of information to ensure the proposed filing transaction is allowable with that court, to confirm the filing fits a particular case with particular litigants, and to identify the local variances from the standards (limitations or extensions), and so forth. As much of these standardized transactions as possible would be taken care of automatically through interaction of one system with another.

The filer will achieve the goal of sending filings without going to the courthouse. The court will receive filings electronically, in a format and inside an envelope with data that suits the court's needs, policies, and system requirements. Filed documents would be acknowledged to the filer and admitted into the court's case and document management systems, finding their way into the case files and becoming accessible to the court's file users. One would not have to learn and comply with a different technology or architecture to file in another court, so long as that court also relies on the standards.

This, at least, is the theory, and we hope soon to have ample opportunities to judge how well these standards work from practical experience.

## **VII. Other Activities Relating to the Technical Standards**

### **1. Open XML Court Interface (OXCI)**

During the development of the technical standards for electronic filing, the concept of an open publicly licensed software application was discussed. Legal XML's purpose had been defined as developing standards, not software. Therefore, work on the **OXCI** concept could not be under the auspices of the **Legal XML Court Filing Work Group** or, later, **Technical Committee**. A few meetings were held in 2000 and then the idea seemed to lie dormant for a while, despite expressions of support and offers of funding from some state courts and other groups. The idea came back to life in 2002 and planning took place, as was appropriate, outside the **Legal XML/OASIS** structure. A project to produce the desired software was launched.

As finally implemented, **OXCI** refers to a consortium of states who have been developing a common **Request for Proposals (RFP)** for an **open, public Electronic Filing Manager (EFM) application**. Once that RFP is done, the **OXCI** work group will have discharged its mission. At that point, this work is to become a **Georgia State Administrative Office of the Courts (AOC)** project. They will actually issue the RFP and select a contractor who will build the EFM software. When OXCI succeeds as planned, its electronic filing application will be available at no cost for any court that chooses to use it.

### **2. The “Reconciliation” and the Justice XML Data Dictionary**

“Global,” the **Global Justice Information Network Advisory Committee**, mentioned above in relation to its interest in technology standards for justice agencies and systems, has been engaged in an important coordinative role that greatly affects standards development throughout the law, safety, and justice fields in the United States. It is part of a general development of mutual awareness relative to XML standards in government, particularly law, safety, and justice and among federal agencies. While it is hard to predict how much cooperation and sharing of detailed specifications will be possible, it is good to note it is being explored. For more information about developments in XML standards in government, see [www.xml.gov](http://www.xml.gov) and [it.ojp.gov/global](http://it.ojp.gov/global).

In the course of 2000 and 2001, it became evident that the **Legal XML Court Filing Work Group** was not the only act in town. Important XML standards development efforts were also under way by two other significant groups, the **Interstate Criminal History Transmission Specification (“Rap Sheets”)** group and the **Regional Information Sharing System (RISS)**. Through the **United States Department of Justice’s Office of Justice Programs**, a “Reconciliation” project was proposed and carried out involving all three of these specification-writing groups. The initial product of this reconciliation was known as the **Reconciliation Data Dictionary (RDD)**, setting out principles for writing the DTDs, structuring data element tags, and defining how elements like names, dates, addresses, and more were to be handled. Later on, the **American Association of Motor Vehicle Administrators (AAMVA)** joined in the **Reconciliation** and the **RDD** was expanded to include detailed terms required for data relating to motor vehicles. Each group agreed to rely on the data element definitions in the **RDD** in writing

future specifications. Where data elements in the *Dictionary* were not applicable to a particular specification, document, or implementation, they would simply be ignored.

The collaboration leading to the *RDD* was an outstanding example of groups being willing to cooperate for the greater good of developing standards with the widest possible applicability in the justice area. From this collaboration has grown a major project to develop the *Justice XML Data Dictionary*. This is a project of the **Justice XML Structure Task Force**, formed by the **XML Subcommittee of the Global Infrastructure Standards Work Group**. It is thus a creature of **Global**, which advises the **Office of Justice Programs of the U.S. Department of Justice**. Working with the **National Telecommunications and Information Administration (NTIA)** and the task force that created the *RDD*, the **XML Committee of Global's Infrastructure and Standards Working Group (ISWG)** agreed on basic principles for building the **Justice XML Data Dictionary**. Specifically, a **Justice XML Data Dictionary Schema (JXDDS)** is to be developed for the **Justice XML Data Dictionary**. This will constitute an XML specification that standards groups such as those in **OASIS Legal XML** can adopt for a substantial amount of the data elements applicable to their own scope.

Principles enunciated for the *Data Dictionary* include that it should:

- maximize information sharing
- be reusable, extensible, and maintainable,
- use object-oriented data concepts,
- employ current information systems technologies and best practices,
- promote voluntary but widespread adoption,
- evolve to become universally standard throughout the justice community,
- be part of a common repository of standard, referenceable, reusable, extensible data components that use the semantics and structure of the Data Dictionary,
- embody an information model of general use to the justice community,
- support development of XML schemas for both documents (persistent records created for business purposes) and data transactions (possibly transient exchanges of data),
- continue to be developed, extended, and maintained,
- build on shared relationships and knowledge and mine to discover or create new information and knowledge,
- not promise to be perfect, but acknowledge that tradeoffs will be necessary.

Presently, under direction of the **Justice XML Structure Task Force**, consultants from the **Georgia Tech Research Institute (GTRI)**, Mark Kindl and John Wandelt, are working on the design for implementing the *Justice XML Data Dictionary*.

As this project continues to unfold, there will be a need for subject matter experts in all justice fields, including courts, to help in refining and defining the many data element and attribute names used in those fields. The **GTRI** group is developing the technical design and gathering candidate data elements, with the assistance of representatives from groups like the **Legal XML** technical committees. There should be plenty of opportunity to contribute to the ongoing development and expansion of the *JXDD*. This dictionary should become the centerpiece for future specifications, including those prepared for systems serving the courts.

### **3. 2GEFS: 2nd Generation Electronic Filing Standards (California)**

In the State of California, a project called the *2<sup>nd</sup> Generation Electronic Filing Specifications Project (2GEFS)*, also styled as *xmlLegal*, formed through **California's Administrative Office of the Courts**, has begun work to “fast-track” the development of XML standards for electronic filing for the courts of California. Its relationship to the national standards work of *OASIS/Legal XML* has not been fully defined, but is under discussion.

This initiative began recently to develop electronic filing standards for the courts of California. The project is described in detail at [www.courtinfo.ca.gov/programs/efiling/](http://www.courtinfo.ca.gov/programs/efiling/). The site includes instructions on how interested persons outside of California can sign on as observers. For an explanation of the acronyms used in these excerpts, you may wish to review the explanations in the section titled 1. Concepts and Buzzwords on page 27.

The purpose of *2GEFS* is described as follows:

The Second Generation Electronic Filing Standards (2GEFS) project is chartered to create a new, coherent set of XML Schema and related specifications for court electronic filing and case management systems, using as a basis the implementation experience and knowledge of Legal XML experts gained over the past several years. ...

...In defining technical standards for electronic filings, we are establishing the basis for a competitive, market-oriented environment that ultimately will enable any EFSP to exchange filings with any court. ...

[The following describes elements of the conceptual model.]

**Filers** interact with the courts via EFSPs (courts can act as EFSPs). They are either parties to a case, in which instance they may access all documents and information allowed by the court, or they are not parties and document/information access may be limited. Also note that law firms and those with some variety of computerized practice management system will want to receive information about their filings from courts in XML.

**EFSPs** have customers to whom they provide support and probably applications, collect court fees, and forward fees and filings to courts. They also provide information about cases that their customers want (and are entitled) to see.

**Courts** accept filings from any EFSP (with which they have agreements) via a single application (the EFM) interfaced to their CMS. Courts could conceivably act as EFSPs, but they should implement using the same model.

**Court Filing XML Envelope** is a standardized XML structure inside of which a court form or document is packaged and conveyed to a court's EFM.

**CMS API** is based on a specification defining how EFM applications talk to case management systems. The specification addresses one of the principle [sic] obstacles to courts realizing benefits from e-filing - the cost and effort of integration.

**Exchange Point** is a repository and services registry.

**Court Policy XML** tells the EFM and EFSPs the preferences of a court with respect to electronic filing.

**Request/Response (R/R) XML** tells the EFM and EFSPs the normative (standardized) and customized queries the court supports, as well as who is entitled to the information.

**CMS Data Configuration (CDC) XML** gives the EFM and EFSPs detailed information about the filing transactions and data the CMS can handle.

**Public access** is shown here as a matter of clarification. It is not a component of e-filing and is not to be confused with the flow of data back to filers (which is handled by Request/Response XML and the EFM transaction set). It provides general purpose, unprivileged information for those who are not parties to cases subject to California's rules of court for privacy and access. The model is applicable to all types of filings: civil, criminal, domestic, juvenile, traffic citations, or any other case type. For cases typically involving government entities as a party, district attorneys or public defenders (for example) can use EFSPs, or their CMSs can talk directly to a court's EFM using the Court Filing specification. Once a court has implemented a compliant EFM application, it is theoretically capable of processing e-filings for any case type supported by its CMS by simply configuring its Court Policy XML, request/Response XML, and CDC XML files. ...

Discussions have taken place between leaders in the *2GEFS* and *Legal XML Electronic Court Filing Technical Committee* regarding the relationship between the two groups and the standards they produce. The California effort was clearly intended to take a different path from Legal XML in response to a perceived need to address the needs of the courts in that state. The following message from Tom Smith from the California AOC to John Greacen, chair of the Legal XML Electronic Court Filing Technical Committee describes the plans 2GEFS has for sharing the specifications it expects to produce. Mr. Smith wrote:

I think the best way to explain the intent of the General Public License (GPL) and our Second Generation Specifications (2GEFS) project's policies in general is to step through the specification development process as California AOC (AOC) intends to manage it.

The GPL itself will be drafted in a consensus-based process involving all 2GEFS participants and the AOC. It will seek to (1) grant joint ownership and joint control of work products to participants as a fair exchange for the intellectual property and time they will contribute to the project, (2) ensure that world-wide public use of the specifications is allowed for free, perpetually, and on non-discriminatory terms, and (3) give participants a basis to legally prohibit someone from using the work products in an "embrace, extend, and extinguish" strategy. We believe these factors address problems that may have inhibited private sector contributions to OASIS/LegalXML efforts. The merit of this approach (as established in the 2GEFS Conditions for Participation and draft GPL) is demonstrated by the fact that all but one of the principal electronic filing service providers in the United States have agreed to be participants in 2GEFS - and the one abstention is due to a lack of resources rather than a lack of desire.

Upon completion of specifications we will publish them under the GPL to the public, to the OASIS/LegalXML community, and to any other standards body or stakeholder that either expresses an interest or that we believe might be interested in adopting them. Following publication of the specifications, there will be a six to eight month period during which the AOC will conduct interoperability tests. During this period the public and OASIS/LegalXML TCs may implement the specifications and/or comment on the specifications. We encourage

implementation and comment in the belief that such activity yields better results. At the conclusion of the period we will take all such comments and lessons learned from our interoperability tests and either revise the specifications or reject a suggestion with a written explanation (consistent with W3C policy and, I note, the process used for the proposed national Electronic Filing Process Standards).

We feel six to eight months is enough time for all stakeholders, including the OASIS/Legal XML community, to test and debate the specifications and provide comment. We understand that if stakeholders' comments and concerns are not fairly, properly, and adequately addressed, that it is less likely stakeholders will adopt the specifications and they will go down their own, separate path(s). We will therefore endeavor to take all comments seriously, including and especially comments from the OASIS/LegalXML community.

Once comments and lessons learned have been incorporated, the specifications are final and considered "frozen". The developer community or anyone else may implement products based on the specifications knowing they are stable. Under the intended GPL there are provisions that allow authorized extensions of the specifications provided that all such extensions be published back to the owners. Absent this process, however, no one may produce derivative works based on the specifications. This prevents the proliferation of incompatible variants and is in the best interests of the participants and any other developer who implements the specifications. In any event, the frozen specifications will be the basis for certification in California, and California will itself be a licensee under the GPL.

As I noted above the participants are universally aware of the value of open standards, and it will be to their mutual advantages to see the specifications adopted or ratified by a national or international standards body - I don't believe we would have succeeded in attracting any of the participants without that common understanding. OASIS/LegalXML can influence the initial specifications through the process described above. It can extend the specifications through the process described above. Potentially, it could even inherit the specifications if it can convince the owners and licensors that OASIS/LegalXML is an appropriate and effective custodian of standards. An OASIS member, the California AOC will work under the provisions of the consensus-based procedures of the Electronic Court Filing or other TCs to help realize the will of the membership with regard to 2GEFS specifications.

## **VIII. Conclusion: What Does This Mean for You?**

What does this mean to you? The answer, of course, is, "*It depends on where you stand relative to electronic filing in a court.*" Here are some suggestions I have for actions you might take, depending on who you are:

Whatever your role, advocate for the use of national standards for electronic filing in the courts. Do so because you appreciate that there would be chaos without them and electronic filing will never happen if there are many competing, incompatible ways to do it.

If involved in development or procurement of electronic filing or related systems in a court, insist that the vendors and developers and their products comply fully with the national standards. Compliance may need to be verified. There is a process being developed within **Legal XML** that may result in an independent compliance and certification process.

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If involved as a vendor or information technology specialist in the courts, learn more about the technical standards and contribute what you can to the dialogue that continues as the standards come together.

As a worker within a court, whether judge, clerk, legal staff, prosecutor, defender, lawyer, researcher, self-represented litigant, or a service provider, advocate for electronic document technology, including electronic filing.

It is time to let go of the constraints and inefficiencies of a paper-based system of creating and using court records. The legal and business requirements can be provided for through new approaches and tools, some of which are still under discussion and development.

The time is ripe for everyone to participate in the process of bringing this new technology to full bloom in the courts over the next few years. The time is at hand for learning, discussing, and working together to meet the challenges of doing it right.

Is this new technology inevitable? Probably. Is it desirable? Probably, but many have honest misgivings that must be respected. Is it easy to implement? Not really, because it is complex, but in implementing it we come to know our business as we never have before. Once implemented, we may have new issues and problems, but we will have new advantages and powers not available before. The key is to take one step at a time and to keep moving upward, always mindful that the purpose of all of this is enhancing our system of justice.

Given all of the interest and activity and attention given to standards, this should be clear:

***It's TIME for standards for electronic filing!***

**Roger Winters**  
Seattle, Washington  
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